



Larry J. Tarabicos  
Geoffrey L. Grosso  
Scott L. Matthews  
Michael J. Hoffman  
Daniel F. McAllister  
Lauren R. Otto (GA and PA only)  
Noah D. Chamberlain

Michael J. Hoffman  
mike@tarabicosgrosso.com  
(o) 302-757-7811  
(f) 302-757-7801  
One Corporate Commons  
100 West Commons Boulevard  
Suite 415  
New Castle, DE 19720  
302-757-7800  
www.tarabicosgrosso.com

November 11, 2019

**VIA DELAFILE AND ELECTRONIC MAIL**

Rajnish Barua, Ph.D.  
Executive Director  
State of Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

**RE: In the Matter of the Application of Lewes Board of Public Works For A  
Certificate of Public Convenience And Necessity to Provide Water Services  
Pursuant to 26 Del. C. § 203C (Filed July 9, 2019) – PSC Docket No. 19-0444**

Dear Dr. Barua –

This firm represents the Board of Public Works of the City of Lewes (the “Lewes BPW”). I write to withdraw the above-referenced Application for a Certificate of Public Convenience and Necessity to Provide Water Service.

On July 9, 2019, the Lewes BPW filed an application for Certificate of Public Convenience and Necessity to Provide Water Services Pursuant to 26 Del. C. § 203C concerning that approximately 50.23 acres known as the Mitchell Farm (the “Mitchell Farm CPCN Application”), being further identified as having Sussex County Tax Parcel Number 335-8.00-37.00 (the “Mitchell Farm Property”). This application was assigned PSC Docket No. 19-0444 and is currently pending before the Public Service Commission for action during its scheduled meeting this Thursday, November 14.<sup>1</sup>

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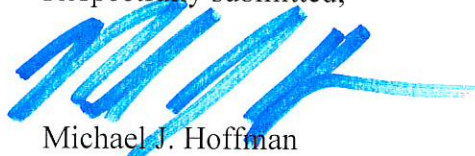
<sup>1</sup> The original application filed by the Lewes BPW in this docket also included an approximately three-acre parcel identified by Sussex County Tax Parcel Number 335-8.00-37.01 (the “Cape Henlopen Medical Center Parcel”). The Commission bifurcated the Lewes BPW’s application and granted the requested CPCN for the Cape Henlopen Medical Center Parcel via Order No. 9476 on October 8, 2019. Accordingly, PSC Docket No. 19-0444 now only concerns the Mitchell Farm Property.

Today, I received the enclosed letter from David C. Hutt, Esquire, counsel for Mitchell Family, LLC, the owner of the Mitchell Farm Property, withdrawing (revoking) Mitchell Family, LLC's petition for water service from the Lewes BPW. Because Mitchell Family, LLC's petition formed the basis of the pending application under Title 26, Section 203C, the Lewes BPW has no choice but to withdraw the pending Mitchell Farm CPCN Application. In doing so, the Lewes BPW reserves the right to reapply for a Certificate of Public Convenience and Necessity to Provide Water Service concerning the Mitchell Farm Property again in the future.

On behalf of the Lewes BPW, please accept our sincere appreciation for the Commission and Commission staff's time, attention, and efforts in this matter.

Please do not hesitate to contact me should you have any questions or if there is additional information I can provide to assist in processing the withdrawal of the pending Mitchell Farm CPCN Application.

Respectfully submitted,



Michael J. Hoffman

Enclosure

cc: Renay Edge  
Connie McDowell  
Samantha Misner  
Donna Nickerson  
Ann Marie Townshend  
Thomas Walsh, Esquire  
Thomas P. McGonigle, Esquire  
David C. Hutt, Esquire  
James D. Nutter, Esquire  
Darrin Gordon

# Morris James LLP

David C. Hutt  
302.856.0018  
dhutt@morrisjames.com

November 11, 2019

**VIA: U.S. 1<sup>ST</sup> CLASS MAIL & EMAIL (mike@tarabicosgrosso.com)**

Board of Public Works of the City of Lewes  
c/o Michael J. Hoffman, Esquire  
Tarabicos Grosso, LLP  
One Corporate Commons  
100 West Commons Boulevard, Suite 415  
New Castle, DE 19720

RE:	CPCN Petition:	Mitchell Farm (a/k/a Zwaanendael Farm)
	Property Owner:	Mitchell Family, LLC
	Tax Parcel No.:	335-8.00-37.00
	PSC Docket No.:	19-0444

Dear Mike:

I am writing to inform you that, after careful thought and consideration, the Mitchell Family, LLC has decided to withdraw its request to the Board of Public Works of the City of Lewes ("BPW") to include its property (SCTP No. 335-8.00-37.00, the "Property") within the BPW's service territory for water. As the BPW is the applicant for the above-referenced petition pending before the Public Service Commission ("PSC"), my client's more specific request is that the BPW withdraw the CPCN petition for the Property. Stated otherwise, the underlying basis for the application, the petition of the property owner, no longer applies as my client is withdrawing (revoking) its petition (*see* 26 Del. C. §203C (e)(1)(c)).

My client asked me to thank the BPW for the efforts it has made to attempt to include the Property within the Lewes BPW's service territory for water service. This request to withdraw the petition is by no means a reflection on the BPW. However, as much as my client hoped to have its potable water supplied by the BPW, the City of Lewes' ("City") interference in that process through the filing of its motion to intervene and then its objection in the form of a Motion to Dismiss/Reject/Stay the petition requires the instant withdrawal.

The uncertainty in the process created by the City's positions and filings has frustrated my client and left a considerable amount of concern regarding how this application would be handled not just at the PSC but moving forward as the Property is developed. For example, the recently discussed minutes from a joint meeting of the City and BPW indicate that both your client and the City agreed that the provision of utilities to the corner parcel (*i.e.*, Lot 1 also known as the Cape

**Michael J. Hoffman, Esquire**

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Henlopen Medical Center) did not need to be tied to annexation. However, in the last several months a considerable amount of time and money was spent because the City intervened in the Lot 1 application (in addition to the Mitchell Farm application) and did not file a formal objection because the owners of Lot 1 signed a pre-annexation agreement to ensure construction and opening deadlines could be met for the building on Lot 1.

Rather than embarking upon further frustration and uncertainty, my client has decided to withdraw the petition. The frustration arises from the inconsistencies that have been observed in the positions being taken (like the one referenced in the prior paragraph). This type of uncertainty, coupled with the possibility of further litigation (*see* ¶ 25 of the BPW's response to the City's Motion to Dismiss/Reject/Stay) as described in the BPW's response to the City's Motion to Dismiss/Stay is not conducive to a property owner being able to plan, budget, market or have any confidence in the process for the development of its property. In short, it is impossible to predict how long the litigation will last between the City and the BPW and whether litigation would be filed against the Mitchell Farm (not to mention the expense of that litigation).

Again, thank you and the BPW for filing the application and pushing forward on behalf of my client. Throughout, the BPW has conducted itself professionally and has provided my client with every courtesy. However, at this time, with some real regret, my client requests that the CPCN Petition for its property (Docket No. 19-0444) be withdrawn. Please do not hesitate to contact me if you have any questions or need any further information.

Very Truly Yours,

MORRIS JAMES LLP

  
David C. Hutt

Cc: Mitchell Family, LLC (via: email)

## CERTIFICATE OF SERVICE

I hereby certify that this 11th day of November 2019, I caused a true and correct copy of the foregoing to be served upon the persons listed below in accordance with the requirements of 26 Del. Admin. C. § 1001-1.6.6.

### VIA ELECTRONIC MAIL

Renay Edge	renay.edge@state.de.us
Connie McDowell	Connie.McDowell@delaware.gov
Samantha Misner	Samantha.Misner@delaware.gov
Donna Nickerson	Donna.Nickerson@delaware.gov
Ann Marie Townshend	ATownshend@ci.lewes.de.us
Thomas Walsh	ThomasD.Walsh@delaware.gov
Thomas P. McGonigle	Thomas.McGonigle@dbr.com
David C. Hutt	dhutt@morrisjames.com
James D. Nutter	jnutter@pgslegal.com

### TARABICOS GROSSO, LLP

/s/ Michael J. Hoffman  
Michael J. Hoffman (#5349)  
100 W. Commons Boulevard, Suite 415  
New Castle, Delaware 19720  
(302) 757-7811  
mike@tarabicosgrosso.com  
*Counsel for Lewes BPW*